

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM R. GREIG and ESTER GREIG,
Plaintiffs-Appellees,

UNPUBLISHED
July 29, 2014

v

RONALD LAMONT and AMANDA LAMONT,
Defendants-Appellants.

No. 312184
Oakland Circuit Court
LC No. 2010-110700-CK

Before: MARKEY, P.J., and OWENS and FORT HOOD, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order denying their motion for case evaluation sanctions pursuant to MCR 2.403(O). We reverse and remand for a determination of the amount of case evaluation sanctions.

Plaintiffs' complaint involved a claim for accelerated rent under a lease of a home to defendants as well as other tenant charges (utilities and pool maintenance) and damages to the home. The trial court ordered case evaluation, and plaintiffs were awarded \$18,000. Defendants accepted the award and plaintiffs rejected it by allowing the time to accept to pass. The trial court granted defendants' motion for summary disposition on the issue of lease payments but did not address other issues. Thereafter, the parties stipulated to resolve the issue of tenant charges and damages by allowing plaintiffs to keep the \$7,500 deposit, which covered rent for one month and any other tenant charges or damages. This stipulation expressly provided that defendants' right to an award of sanctions was not affected and expressly reserved that right. Defendants filed a motion for both case evaluation sanctions pursuant to MCR 2.403 and frivolous claim sanctions pursuant to MCR 2.114, which the trial court denied. The court also denied defendants' subsequent motion for reconsideration of its ruling. Defendants appeal only the trial court's decision regarding case evaluation sanctions.

Defendants argue that the trial court erred in denying case evaluation sanctions because the trial court had insufficient justification to utilize the "interests of justice" exception pursuant to MCR 2.403(O)(11). We agree.

This Court reviews a trial court's decision to grant case evaluation sanctions under MCR 2.403(O) de novo. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). The trial court's award of attorney fees and costs is reviewed for an abuse of discretion. *Id.* "An abuse of

discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.*

MCR 2.403(O)(1) provides:

If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

For purposes of this rule "verdict" includes "a judgment entered as a result of a ruling on a motion after rejection of the case evaluation." MCR 2.403(O)(2)(c).

In its denial of defendants' request for case evaluation sanctions, the court relied on MCR 2.403(O)(11), which provides an exception to the mandatory award of sanctions under MCR 2.403(O)(1). MCR 2.403(O)(11) provides: "If the 'verdict' is the result of a motion as provided by subrule (O)(2)(c), the court may, in the interest of justice, refuse to award actual costs." The trial court found that "[p]laintiffs' claim for breach of contract for unpaid rent was a viable claim, represented a majority of Plaintiffs' damages, and greatly exceeded the \$18,000.00 award," and denied case evaluation sanctions.

Analyzing MCR 2.403(O)(11), this Court has held: "The term 'interest of justice' . . . must not be too broadly applied so as to swallow the general rule of subsection 1 and must not be too narrowly construed so as to abrogate the exception." *Haliw v City of Sterling Hts (On Remand)*, 266 Mich App 444, 448; 702 NW2d 637 (2005), citing *Luidens v 63rd Dist Court*, 219 Mich App 24, 33; 555 NW2d 709 (1996). The trial court is required to articulate the basis of its discretionary decision when it invokes the interest of justice provision to deny sanctions. *Haliw*, 266 Mich App at 449-450. The interest of justice provision should only be invoked in unusual circumstances, such as where there is (1) a legal issue of first impression, (2) unsettled law where substantial damages are at issue, (3) an indigent party and issue in a case that merits a decision by a trier of fact, (4) the prevailing party has engaged in misconduct, or (5) the effects on third parties may be significant. *Id.* at 448-449. "The common thread in these examples," *Luidens* instructs, "is a public interest in having an issue judicially decided rather than merely settled by the parties." *Id.* at 449, citing *Luidens*, 219 Mich App at 36. While the Court noted that this list of unusual circumstances was not exclusive, the Court also stated "that factors normally present in litigation, such as a refusal to settle being viewed as 'reasonable,' or that the rejecting party's claims are 'not frivolous,' . . . are insufficient 'without more' to justify not imposing sanctions in the 'interest of justice.'" *Haliw*, 266 Mich App at 448, citing *Luidens*, 219 Mich App at 33-34, 36-37.

Here, none of the unusual circumstances articulated in *Haliw* and *Luidens* were present. Moreover, the trial court's reasoning in denying the award was that plaintiffs' claim at the time of case evaluation was viable and the alleged damages exceeded the case evaluation award. This decision specifically relies on the fact that plaintiffs' claim was reasonable and not frivolous, which the Court in *Haliw* and *Liudens* specifically stated was not sufficient to justify the use of the interest of justice exception. *Haliw*, 266 Mich App at 448; *Luidens*, 219 Mich App at 33-34.

Therefore, we find that the trial court abused its discretion when it utilized the “interest of justice” exception.

We reverse the trial court’s decision denying defendants’ motion for case evaluation sanctions and remand the case to the trial court for a determination of the amount of case evaluation sanctions pursuant to MCR 2.403.

Reversed and remanded. Defendants, the prevailing parties, may tax costs. MCR 7.219. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Donald S. Owens

/s/ Karen M. Fort Hood